

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRP.No. 3407 of 2001(B)

CC.638/1973 of TALUK LAND BOARD, MANNARKKAD

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REVN. PETITIONERS:

1. SMT. EASWARI AMMAL, W/O.KANTHASWAMY BOYAN AGALI,
ATTAPPADY, PALAKKAD.
2. VANAJA, D/O.EASWARY AMMAL, -DO- -DO-
3. KRISHNA VENI, W/O.KANTHASWAMY BOYAN,
-DO- -DO-

BY ADV. SRI.N.N.SUGUNAPALAN
SRI.M.RAMESH CHANDER
SRI.M.VIJAYAKUMAR

RESPONDENTS:

1. TALUK LAND BOARD, MANNARKKAD.
2. TAHSILDAR, MANNARKKAD.
3. VILLAGE OFFICER, AGALI.
4. STATE OF KERALA REPRESENTED BY ITS CHIEF
SECRETARY, SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI THOMAS JOHN AMBOOKEN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P.R. RAMAN, J.
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C.R.P. NO.3407 OF 2001
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DATED THIS, THE 13TH DAY OF JULY, 2007.

ORDER

This civil revision petition is filed challenging the order passed by the Taluk Land Board, Mannarkkad in C.C. 638/73 dated 27.9.2001. The first petitioner is the first wife of the declarant Kanthaswamy Boyan. Third respondent is his second wife. There was a ceiling case against Kanthaswamy and the Taluk Land Board, by its proceedings dated 12.2.1987 found that Kanthaswamy is holding 30.97 acres of land in excess of ceiling area. This was challenged before this Court in C.R.P. 870/1987 and subsequently, before the apex court in SLP 7804/1989, but without success. An extent of 11.30 Acres situated in different survey numbers in Agali Village were stated to be the properties set apart to the petitioners under a partition deed of the year 1973 by document No. 541/73. Claiming the benefit under Act 5 of 1998, namely, Kerala Stay of Eviction Proceedings Act, 1998, petitioners sought stay of the eviction proceedings of their respective lands which were included in the account of the declarant as excess land. The Taluk Land Board, by the order impugned in this revision, dismissed the application against which the present revision is filed.

2. The petition was dismissed on the grounds that (i) petitioners are not purchasers of the property as their claim itself is based on a partition deed, (ii) persons who have surrendered the land are not entitled to the benefit of the Act and (iii) The Taluk Land Board has no jurisdiction to stay eviction proceedings as per the Kerala Stay of Eviction Proceedings Act, 1998.

3. Petitioners dispute the correctness of the reason that surrender has not taken place as stated in the order and therefore, this reason would have been waived with by the authority in dismissing the application. It is not necessary for the limited purpose of this case to consider as to whether petitioners were actually dispossessed or not.

4. Act 5/1998 is an enactment provided for stay of eviction of some cultivating tenants and small holders of lands purchased by them which are subsequently found as excess land to be surrendered under the Kerala Land Reforms Act, 1963. The preamble of the act also shows that numerous proceedings were pending before the Land Tribunals and Taluk Land Boards and other authorities wherein small holders and cultivating tenants who purchased land for consideration were under threat of eviction or dispossession and in view of the persistent demand from the general public to protect such small holders and cultivating tenants, Government thought

in public interest to provide for temporary protection to those holders who are purchasers of such land from eviction or dispossession, pending enactment of a legislation to protect their right and interest on such land. Therefore, it could be seen that this is only a temporary enactment until the above said land holders' rights are sought to be protected by a subsequent legislation. Section 3 of the said act opens with a non obstante clause which reads as follows:

" Notwithstanding anything to the contrary contained in the Kerala Land Reforms Act, 1963(1 of 1964) or in any other law for the time being in force or in any judgment, decree or order of any court or proceedings of the Land Tribunal, the Taluk Land Board, the State Land Board or any other authority during the period of operation of this Act,-

(a) no cultivating tenant or small holder who holds or possesses any land as purchaser for consideration, evidenced by registered document or otherwise, and which is subsequently found as excess land to be surrendered under the provisions of the Kerala Land Reforms Act, 1963(1 of 1964), shall be evicted from, or dispossessed of, such land; and

(b) all proceedings for such eviction or dispossession pending before any Court, Tribunal, Board or other authority referred to above, shall stand stayed."

5. Therefore, it could be seen that if the lands in question were the subject matter of any proceedings pending before the Taluk Land Board,

notwithstanding any order passed by it, the benefit of the Act will be extended to such cases provided, the conditions contained in Clause 3(a) is satisfied. Therefore, the appropriate authority who could stay the proceedings is the very same authority where the matter is pending and therefore, it is wrong to say that the Taluk Land Board has no authority or jurisdiction in the matter of granting of stay, provided, it is satisfied that the conditions under Clause 3(a) is satisfied. However, whether the present case satisfies the conditions under Clause 3(a) arises for consideration.

6. Admittedly, petitioners are claiming right over the land as per a partition deed executed as per Clause 3(a). The person who is entitled for the benefit of this provision must be a cultivating tenant or a small holder who possess the cultivating land as purchased for consideration. In so far as the petitioners do not have claimed that they are purchasers for consideration, but only claiming right under the partition, the claim was rightly rejected by the Land Board. The Civil Revision Petition is accordingly dismissed.

P.R. RAMAN,
(JUDGE)

knc/-

CRP 3407/2001

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P.R. RAMAN, J.

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C.R.P. 3407/2001

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ORDER

13.7.2007.